

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RICHARD BORST,

Plaintiff,

CIVIL ACTION NO. 08-CV-14292-DT

vs.

DISTRICT JUDGE ANNA DIGGS TAYLOR

**MS SELECT REALTY, LLC,
GWENDOLYN GOTT, and
DEBORAH KESSLER,**

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

ORDER DENYING DEFENDANTS' AMENDED MOTION TO COMPEL DISCOVERY
(DOCKET NO. 20)

This matter comes before the Court on Defendants' Amended Motion to Compel Discovery filed on October 23, 2009. (Docket no. 20). Plaintiff has responded. (Docket no. 23). The motion has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 21). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). The matter is now ready for ruling.

This is an action for breach of fiduciary duties and conversion. Defendants assert that Plaintiff's claims are barred by his own breaches of fiduciary duties and bad faith conduct. (Docket no. 5). Attached to Defendants' Motion are Interrogatories and Requests for Production of Documents dated April 21, 2009. (Docket no. 20-3). The Motion asks for an order compelling the Plaintiff to respond to combined Interrogatories and Requests for Production of Documents numbers 25 and 26. Interrogatory number 25 asks Plaintiff to state the nature of his relationship with Lloyd

Blue and produce copies of all documents relating to his answer. Interrogatory number 26 asks Plaintiff to identify income received in the past twenty-four months from business dealings between Plaintiff and Lloyd Blue and produce copies of all documents relating to his answer. Plaintiff states in his Response to Defendants' Motion that he objected to the requests on the grounds of relevancy.

Interrogatories and Requests for Production numbers 25 and 26 are relevant to the Defendants' asserted defense and are therefore discoverable. However, the Court will not order the Plaintiff to respond to the discovery requests for the following reasons. Defendants' Motion does not state when and in what manner the discovery requests were served on Plaintiff and for that reason has not shown that the discovery requests were properly served on the Plaintiff. Defendants also failed to comply with E.D. Mich. LR 37.2 which requires the moving party to provide the Court with a copy of the responses and objections to the disputed discovery requests. Finally, Federal Rule of Civil Procedure 33 states that no more than 25 written interrogatories may be served on a party unless otherwise stipulated to or ordered by the court. Defendants served 29 Interrogatories on Plaintiff. The record does not show that the Plaintiff stipulated to answer more than 25 Interrogatories and no order has been entered permitting the Defendants to serve more than 25 Interrogatories. In addition, the Motion does not indicate whether these are Defendants' First Set of Interrogatories and Requests for Production of Documents. Although Plaintiff states that he only answered relevant Interrogatories (docket no. 23), the Court is unable to determine the precise number of Interrogatories the Plaintiff did answer.

IT IS THEREFORE ORDERED that Defendants' Motion to Compel Discovery is **DENIED** without prejudice.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: November 23, 2009

s/ Mona K. Majzoub

MONA K. MAJZOUB

UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: November 23, 2009

s/ Lisa C. Bartlett

Case Manager